1964

# Gloria G. Fenton v. Cedar Lumber & Hardware Co. : Brief of Appellant

Utah Supreme Court


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# In the Supreme Court of the State of Utah



GLORIA G. FENTON,
*Plaintiff and Respondent*

vs.

CEDAR LUMBER & HARDWARE COMPANY, a corporation,
*Defendant and Appellant*

Case No. 10238

## BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE FIFTH JUDICIAL DISTRICT COURT FOR IRON COUNTY, UTAH

HONORABLE C. NELSON DAY, Judge

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### NATURE OF THE CASE

This is a quiet title action by the Plaintiff-Respondent to quiet the title to certain property in Cedar City, Utah. The Defendant-Appellant filed a Cross Complaint to quiet title to the same property in the defendant.

### DISPOSITION IN LOWER COURT

The lower court found the issues for the plaintiff and rendered a Decree quieting title to the disputed property in the plaintiff-respondent. There was no trial in the lower court and instead the case was submitted

to the court upon the pleadings, an exhibit consisting of an abstract of title to the property and a stipulation of facts entered into by counsel.

## RELIEF SOUGHT ON APPEAL

The defendant-appellant seeks a reversal of the judgment of the lower court and directing the lower court to enter a Decree quieting title to the disputed property in the defendant.

## STATEMENT OF FACTS

This case was never tried but was submitted to the lower court on the pleadings, an abstract of title to the disputed property, written interrogatories and answers thereto, and a stipulation of facts entered into by counsel. The facts are that prior to 1942 one Kate Wallace was the owner of approximately 5.9 acres of land in Cedar City, Utah, including the disputed property. In 1942 Kate Wallace conveyed to one Alice Smith, a predecessor in interest of the plaintiff, part of the plaintiff's property and in 1943 conveyed the remainder also to a predecessor in title of the plaintiff. These deeds from Kate Wallace commenced at the northeast corner of the tracts conveyed and then ran west to "a public road as platted on Plat A of the plat of said property and adjoining property made by Theron Ashcroft, thence south along said east line of said road . . ." In 1946 and again in November of 1950 correction deeds were

executed by Kate Wallace of the same property to the same grantees for the reason that the 1942 and 1943 deeds had a wrong starting place and were therefore erroneous. The 1942 and 1943 deeds are shown at pages 27 and 28 of the abstract of title and the correction deed of November, 1950, is shown at page 38 of the abstract. It is clear, however, that these later deeds were only correction deeds of the same property.

In July of 1944 this same Kate Wallace conveyed all of the remainder of her 5.9 acres, except the "street" area hereinafter referred to, to predecessors in interest of the defendant so that at that date, of the original tract of 5.9 acres, Kate Wallace only retained one tract of land, 66 feet wide and 150 feet deep, the east two rods of which is the property in dispute. On March 15, 1950, Kate Wallace conveyed this last 66 feet by 150 feet tract by Warranty Deed to Cedar City, a Municipal Corporation. Right after the description of the tract is the clause, "*the above property is to be used for street and no other purpose.*" (Italics added).

Cedar City did not open up this property as a public street, however, and in fact it has never been opened or used as a public street, never has been a part of the Cedar City street system and has never appeared on any map or plat as a street. In fact it had never been a street prior to the March 15, 1950 deed to Cedar City from Kate Wallace and was never a public road as was

referred to in the Kate Wallace deeds to plaintiff's predecessors in 1942, 1943 and again in November of 1950. In fact there is no Plat A by Theron Ashcroft or anyone else. Therefore, we have a situation of both the public road and plat referred to in the deeds to plaintiff's predecessors as actually never existing. Instead, the property conveyed to Cedar City as a street and also the property on the east of the street conveyed to plaintiff's predecessors and also that on the west of the street conveyed to defendant's predecessors remained unimproved farming property having a potential value as residential property, which in fact it now is.

As early as August 14, 1951, it became somewhat obvious that Cedar City was not going to open up a street at the property because on that date, Kate Wallace quitclaimed this same 66 feet by 150 feet tract to the defendant. Right after the description of the property is the clause:

> "It is the intention of the grantor to convey all right, title and interest which grantor may own in the above property, heretofore conveyed to Cedar City Corporation for a street, in the event Cedar City Corporation vacates said street."

In January of 1952 Cedar City accepted from the defendant a subdivision of all the property they had acquired from Kate Wallace lying south and west of the "street" property known as the "Valley Circle Subdivision," which subdivision did not make use of the street

property previously conveyed to Cedar City but instead had other streets to serve the subdivision.

The street property, consisting of a tract 66 feet wide and 150 feet long, remained unopened and unused as a street for approximately ten years. In 1960 Cedar City passed an ordinance closing and vacating the "street" even though it had never been opened and used as a street. No person, including the parties or their predecessors, objected to the closing and all parties concerned have proceeded on the theory that the street is now effectively closed. No public or private easement in a street is asserted or claimed and the only question now to be decided is, "who owns this 'street' property, the Plaintiff-Respondent, who is the abutting owner on one side, or the Defendant-Appellant, who acquired the street property from the former owner?" The west two rods of the street property is not in dispute and is owned by the appellant and we are only concerned with the east two rods or the half of the street adjoining the property of the plaintiff.

## ARGUMENT

### POINT I

### WHEN A PUBLIC STREET IS VACATED, THE LAND THAT WAS STREET REVERTS TO THE OWNER OF THE FEE IN THE STREET AND NOT TO ABUTTING LAND OWNER UNLESS HE ALSO OWNS THE FEE IN THE STREET.

At the outset, it should be stated that throughout this brief the words "street," "closing and vacating the

street," "abutting upon the street," and other like references to a street are used. However, a street actually never existed, either physically on the ground or by map or plat, and therefore these words are used advisedly. Even though this brief is concerned with the ownership of the street property, conveyances of property with reference to or abutting upon the street and other like principles, actually none of these principles of law is applicable as a street really never has existed. However, it is felt that the Court, in the last analysis, will want to decide this case on its merits and this brief is written much as it would have been had there actually been a street. But by so doing, the appellant is not conceding that there was a street and it is not abandoning its claim that we are here concerned only with the ownership of a tract of land of building lot size and the law pertaining to streets and the ownership of land in the street has nothing to do with the case.

The plaintiff has presented this case on the theory that whenever a City vacates a public street, the land which was street automatically becomes the property of the abutting land owner; that by the act of simply vacating the street, the abutting owner, ipso facto, became the owner of the street and that this is so even though there really had never been a street. This theory is made clear in the Answers to Interrogatories, stipulation of facts and the Findings of Fact and Conclusions of Law

entered in this case. The defendant submitted to the plaintiff written interrogatories, one of which asked the plaintiff to set forth the nature of her claim to the street. The plaintiff answered in her answer to Interrogatory No. 3 that "the entire claim of the plaintiff to the two rods . . . is based upon acquiring a deed from plaintiff's immediate predecessor in interest who was the owner of the property to the east of the two rods in question at such time as Cedar City Corporation abandoned same for a street and the entire claim of the plaintiff is based upon succeeding to whatever interest this person had, and is based entirely upon the rights of an adjoining property owner to land held for a street at such time as the public body abandons said street or road." Likewise this claim is set forth in the stipulation of facts submitted to the court wherein the stipulation states that the "claim of the plaintiff to the land in question is based upon her being a successor in interest to the parties who owned the property immediately to the east of said street at the time of said vacation of said street by Cedar City." In the court's Findings of Fact and Conclusions of Law the plaintiff's theory is approved as Finding No. 17 provides as follows:

> "The plaintiff's predecessors in title and interest, owning and holding the property abutting the said street on the east side thereof at the time it was vacated by Cedar City approximately ten years after being received by Cedar City, had the

east side of said street revert and revest in themselves . . ."

But the city, by merely closing a street, creates no legal rights in the street, but only relieves the land of a burden. It is not the law now and never has been that a city, by vacating a street, creates any property rights in the abutting land owner or for that matter in the original land owner. It is the law as established almost unanimously by the cases that upon the closing of a street, *the land which was a street goes to the owner of the fee in the street.* The plaintiff has entirely missed the crux of this case by not making an effort to show that she also owns the fee in the street or at least the east two rods thereof. It should be noted that at no time has the plaintiff claimed to be the owner of the fee to half the street, but only that she was the owner of the abutting property and the Court has found that the plaintiff was the owner of the abutting property and in fact this has never been questioned. *But the Court did not find that the plaintiff was the owner of the fee to half the street.* The plaintiff has ignored this completely and has presented this case on the theory that the closing of the street by the City places the fee to the east half of the street in the plaintiff. But the closing of the street has nothing to do with where the fee is, but instead it is the conveyances by the owners of the property which determines where the fee is and from

them, it could only be with the defendant. The law which holds that upon closing of a street, the land goes to the owner of the fee is set forth in *25 Am. Jur., page 424,* as follows:

> "Rights with respect to the reversion of title upon the abandonment or vacation of a highway depend, in the absence of statutory provision, upon the ownership of the fee. The general rule is to the effect that where the absolute and unqualified fee is in the municipality or other public agency, it divests the original owner of his entire interest, so that upon discontinuance of the way as such, the title does not revert to the grantor or the abutting owner, but remains in the municipality or other agency unaffected by the vacation. Where a mere easement of use as a public highway is taken or granted so that the fee of the soil remains in the original owner, the vacation or discontinuance of the highway as such restores exclusive possession thereof to such owner, or his successor or assigns."

A number of Utah cases follow the above rule, notably *Knight vs. Thomas, 101 Pac. 383, 35 Utah 470,* which held that "when the street is vacated, the right to occupy and use the land belongs to him in who the fee is—the City, or the original land owner if it was reserved by him and not conveyed, or to the abutting property owner and the land is subject to all the use and enjoyment and burdens of other lands."

Therefore, it was error for the lower court to find and rule that upon the vacating of a public street, the

street automatically goes to the abutting property owner. It is admitted that if the abutting property owner also happened to own the fee in the street, then such would be the case but not otherwise. As hereinafter pointed out, the abutting property owner could not have been the owner of the fee and therefore, it was error for the court to grant to the abutting owner the title to half the street.

## POINT II

### A CITY ORDINANCE VACATING A STREET CAN PASS NO TITLE TO THE FEE IN THE STREET.

It should be noted that the lower court has taken the position that all that is necessary in order to succeed to the property that once was street is to be an abutting property owner upon the vacating of the street. Findings of Fact No. 17 so provides. But this finding or no other finding by the court was to the effect that the abutting owner also owned the fee in the street and in fact the Findings and the claims of the plaintiff are silent on this important fact. To merely find that the plaintiff or her predecessors, was the owner of the abutting property on the east at the time the street was vacated means nothing. In order to entitle the plaintiff to the street or the east half of it, the court must of necessity also find that this abutting owner also owned the fee to the half of the street now claimed.

It is obvious from the Findings and Conclusions

that the lower court decided this case on the theory that (1) when Kate Wallace conveyed the street property to Cedar City in March of 1950, she parted with all her ownership and title; Finding No. 16 so provides; (2) that since she had parted with her property, her deed of August, 1951, of the same property to the defendant was a nullity and conveyed nothing as Finding No. 16 also so provides; (3) therefore, Cedar City held title to the property and (4) by enacting the vacating ordinance in 1960, the street property automatically "reverted and vested" in the abutting property owner. But this entire theory is fallacious and untenable. In the first place, how can Kate Wallace's deed of March 15, 1950, be said to divest her of all interest in the property? It is clear that she conveyed only an easement or some other limited estate or interest, else why did she attach the clause "the above property is to be used for street and no other purpose"? What if Kate Wallace had instead put in her deed "only an easement for a public street over the above property is hereby conveyed and if Cedar City never opens up a street, or if opened and later vacated, the property shall revert to the grantor"? Could it then be said that Kate Wallace parted with all her interest in the property? But as a practical matter, does not her language say the same thing? After the City received this deed in 1950, could the city have used this property for a park, a public building or some other purpose? The City most certainly could have done if

it had received the full interest in the property. Or suppose Kate Wallace had more clearly set out her restriction on future use of the property and then the City passed an ordinance vacating the street and in addition conveyed the street property to the abutting owner. Would this owner have gotten the title? Clearly the abutting owner would not have as this would be entirely contrary to the expressed intent of the original grantor which would be to reserve in herself the fee.

Furthermore, if Kate Wallace did part with the full interest in the property as the court has so found, then how could the act of adopting an ordinance closing the street pass any title to the abutting owner? An ordinance cannot serve as an instrument of conveyance. If the City actually got the full interest in the street property, or owned the fee, then after closing the street by ordinance, the City would own the street and would have to convey the property to the abutting owner by deed. The Utah case of *Knight vs. Thomas, supra,* establishes this. But there is no such conveyance here and none is claimed.

It should be perfectly clear to anyone that when Kate Wallace conveyed the land in question to Cedar City but then put in her deed the clause, "the above property to be used for street and no other purpose," she was only conveying a public easement and was reserving to herself the fee. This is the only possible

interpretation that can be put upon these words. If there is any possible doubt as to the intention of Kate Wallace, this should be dispelled by her deed only a year and a half later of the same property to the defendant, which deed carried the clause "It is the intention of the grantor to convey all right, title and interest which grantor may own in the above property, heretofore conveyed to Cedar City Corporation for a street, in the event Cedar City Corporation vacates said street." This is page 39 of the abstract of title.

The case of *Brown vs. Oregon Short Line, 102 Pac. 740, 36 Utah 257,* is a leading case on this subject, and shows that a land owner, in granting to a city or other public body, land for a street, may reserve the fee. In that case it was held that a "grantor in granting an easement may restrict his conveyance by apt words to the precise parcel of land intended to be conveyed and he may reserve to himself the title to that portion of the land within the street subject to the public easement and if it appears that such was the intention of the parties, the intention will prevail and the land in the street, in case it is vacated, will revert to the grantor and not to the abutting owner."

As stated previously the lower court's theory of this case is that Cedar City held the full title to the street property and that by adopting the closing ordinance the fee automatically reverted and vested in the

abutting owner without any further conveyance. But as shown above, upon closing the street, the property would go to the owner of the fee and yet the plaintiff has made no effort to show that she also owned the fee in the street and the Findings do not state that the plaintiff also owned the fee and thus the Findings are clearly insufficient to support the Decree. It is submitted that this is the glaring error in this case.

## POINT III

### THE RULE THAT A CONVEYANCE OF LAND ABUTTING UPON A STREET ALSO CONVEYS TO THE CENTER OF THE STREET HAS NO APPLICATION WHERE THERE IS NO STREET, EITHER OPEN AND IN USE OR EXISTING BY MAP OR PLAT.

It should be noted from the abstract of title submitted that none of the conveyances to the plaintiff's predecessors ever expressly convey the street property. In fact the west line of the property conveyed is the east line of the "street." Therefore, how can the plaintiff claim any title to the street property? It is submitted that the only possible claim to the street property is by the application of a doctrine of law completely ignored by the plaintiff, which is that a conveyance of land abutting upon a street or highway actually conveys to the center of the street or highway providing the grantor owns the fee in the street and providing no contrary intention is shown. Although this theory was not raised or relied upon below, the appellant is placed in a position where it may be necessary to refute it.

Since it is clearly not applicable in this case anyway, the undersigned begs the indulgence of the Court to point out why it is not applicable, in the event it is attempted to be relied upon in this appeal by the Respondent.

It is the common law rule that a conveyance of land abutting upon a street also carries to the center of the street. It is based upon a presumption and its application carries actually more property than is described in the deed. Utah has enacted this common law rule by statute, being *Section 27-1-7, Utah Code,* which is as follows:

> "By taking or accepting land for a highway the public acquires only the right of way and incidents necessary to enjoying and maintaining it. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the middle of the highway."

The above section was actually repealed by the Legislature in 1963 and a new section, *27-12-101* substituted, but all the facts involved in this case would be applicable to the old section, however. The above section is only declaratory of the common law as held by Utah cases, including the case of *Hummel vs. Young, 265 Pac. 2d 410, 1 Utah 2d 237,* which shows that there is one qualification to the last sentence of the above statute, which is that *the grantor must first own the fee in the street before he can convey it.* This case states that

"at common law, a private conveyance of land bounded by or abutting on a highway, the fee to which belongs to the abutting owner, is presumed to convey the fee to the highway and to the center thereof." Before the plaintiff's predecessor, who owned the abutting properly at the time Cedar City vacated the street, could convey any interest in the street, that predecessor must have first acquired the fee in the street by deed because the closing of the street by ordinance would give him nothing. It is also submitted that when the statute says that a transfer of land *bounded by a highway* (italics added) it means there must actually be a highway. It is submitted that a necessary and indispensable ingredient of the common law rule and the above section of our code is that there must be a highway or street and if there is none, then the common law rule or the above Statute would have absolutely no application. Furthermore, this statute has nothing to do with who owns a street upon its vacation as it says nothing about this and all it does say is that a transfer of land bounded by a highway transfers to the center.

*Section 27-1-7* also points up another important fact which is that if there is any doubt that Cedar City only obtained from Kate Wallace an easement, this section should dispel any such doubt as it affirmatively establishes that the City only obtained an easement. In the light of this statute, even without the limiting language

in the deed of Kate Wallace to Cedar City in 1950, how could the court find that the City received from Kate Wallace full title and ownership in the property?

But this common law rule or the above section of our code has absolutely no application in this case. There never was a street, either physically on the ground or by plat or map, and this is a necessary prerequisite to the application of this rule of law. During all the times involved in this action, the "street" in question was actually unimproved property the same as the property adjoining. There was nothing to indicate that it was a street and no one used it as such. If there was no street, how could any legal rights to the street property flow to an abutting owner upon the closing of a non-existent street, or by a conveyance of property appearing to abut upon a street? It is admitted that the books are literally full of cases which hold that upon the closing of a street, the street property goes to the abutting owners. But upon reading the cases it is found that the abutting owner also happened to own the fee in the street, and in all cases, there actually was a street, open and in use, or at least existing by official map or plat. Here there was neither and clearly this doctrine of law would have no application.

In fact the reasons for this common law rule as relied upon by the courts are not even present in this case. Some of the courts in following this rule do so

upon the theory that whenever a conveyance is made with reference to a natural monument, be it a stream, street, hedge, wall or post, it actually carries to the center of the monument. But what if there was no such monument? However, the reason given for applying this rule as followed by a majority of the courts is that when a grantor conveys land abutting upon or with reference to a street, the grantor actually intends to convey all he owns because a narrow strip of land, consisting of half a street, in the event the street is later vacated, would be of no use to him and yet would be of considerable value to his grantee. Therefore, the grantor is presumed to have intended that his deed carry to the middle of the street. But we do not have that situation here. Instead it will be noted that Kate Wallace, who originally owned the whole tract of approximately 5.9 acres, first conveyed out the property east of the "street" to plaintiff's predecessors. At that time in 1942, she still owned the "street" property and also all the remaining property to the west and south. It is not a situation of Kate Wallace then only owning the fee to the "street" so that upon its closing she would only have a narrow unusable strip of land, but rather she owned a sizable tract adjoining on the west. How could it be said that Kate Wallace actually intended to convey to plaintiff's predecessors an additional 2 rods of land which would only have the effect of de-

creasing her larger tract by that much? Therefore, it is clear that the main reason given by the courts for applying this rule is not here present.

Furthermore, it should be noted that at the time Kate Wallace conveyed the property to plaintiff's predecessors, the west line of which was the "public road as shown on Plat A of said property and adjoining property made by Theron Ashcroft, then south along the east line of said road . . .," there actually was no Plat A and no road in existence and therefore, this was not a situation of conveying property abutting upon a street which is always the situation in the cases adhering to this rule.

Therefore, it is the earnest contention of the defendant that even if the planitiff had relied upon this doctrine of law to give her the fee to half the street in question, it still would not be applicable. Thus, the only possible theory upon which the plaintiff could sustain a claim into the fee in the street fails.

## POINT IV

### AS TO WHETHER A GRANTOR CONVEYS THE FEE IN A STREET BY A CONVEYANCE OF THE STREET OR BY A CONVEYANCE OF ABUTTING PROPERTY DEPENDS UPON THE INTENTION AND THE SURROUNDING CIRCUMSTANCES.

The best reason for holding that Kate Wallace never intended to part with the fee in the street property or applying the common law rule is that from the deeds and surrounding circumstances, it is clear Kate

Wallace intended otherwise. The common law rule is only a rule of presumption and if a contrary contention is shown by the grantor in her deeds or in the surrounding circumstances, that will prevail. Here Kate Wallace, who is now deceased, made it abundantly clear that she did not intend to part with the fee to the street property when she conveyed the property abutting on the east. A few years after deeding out the property on the east to the plaintiff's predecessors, she then conveyed an easement in the street property to Cedar City. It is clear that she intended to reserve the fee because she stated in her deed to Cedar City that the property was to be used for street and for no other purpose. This evinces an intent on her part to hold the fee. Otherwise, why was not this deed to Cedar City a simple conveyance by warranty deed with no strings or conditions attached? Then a year and a half later, in August, 1951, at which time no street had ever been opened or in existence, she executed her deed to the defendant of the identical "street" property and then following her description of the property put in the clause "it is the intent of the grantor to convey all right, title and interest in the above property heretofore conveyed to Cedar City for a street in the event Cedar City vacates said street." What could be clearer than at that time Kate Wallace was intending to convey to the defendant the fee in the street?

As stated above the common law rule is a rebuttable presumption. There are almost as many cases rebutting this presumption as there are which follow it. It should be noted that a strict construction of any deed to property abutting upon a street would not include any of the street but instead would only run to the street line. In other words it is to a certain extent a fiction and the courts are very liberal in finding a contrary intention. Perhaps the best case in which the presumption is rebutted happens to be a Utah case, the leading case of *Brown vs. Oregon Short Line, supra.* This is a very interesting case and should be controlling here. There a property owner owned a tract of land where the Union Pacific Railroad yards are now located in Salt Lake City. He opened up a short street to serve the property and then divided it into building lots, fronting on this street and he then commenced selling the lots. A year or so later, he conveyed to the same grantees, by a separate conveyance, an easement in the street. The street was open and used for a number of years as a means of ingress and egress to the lots. Subsequently the railroad acquired all the property abutting on this street for its yards and then claimed the land which had been the street. The necessity for such a street ended when the railroad acquired all the abutting property. The railroad claimed that since the abutting owners had owned the fee in the street by reason of their

deeds of property abutting upon the street, then the railroad acquired the fee in the street by buying out the abutting owners. The Court held otherwise, however, stating that the original owner, by conveying to his grantees separately an easement in the street a year or so after the conveyance of the abutting property, showed his intention to retain the fee in the street. This case is very similar to the case at bar in that the clear intention of Kate Wallace throughout all of her deeds was that the fee in the street had never passed and that she owned it all the time.

Another revealing fact shows the intention of Kate Wallace. It should be noted that she first conveyed out the property on the east of the street to plaintiff's predecessors and then she conveyed the property on the west of the street to defendant's predecessor. This left her owning only a small tract, 66 feet wide and 150 feet long, and obviously of building lot size. In fact it is identical with the plaintiff's lot on the east and also with the lot east of the plaintiff. Kate Wallace most certainly intended that the fee in the street would remain with her and that if, for any reason, it was not used for a street or if used and then vacated, this building lot would come back to her.

Forgetting for a moment the law involved in this case, let us look at the equities. This case is plainly a situation of the plaintiff attempting to "get something

for nothing.'' The common owner, Kate Wallace, had made it abundantly clear that she did not intend to divest herself of the fee until she did so to the defendant in August of 1951, yet the plaintiff is attempting to acquire a six rod lot when her grantor only had a four rod lot and at the expense of a person who did everything she could do to retain it to herself.

## CONCLUSION

In conclusion, it is the appellant's contention that the plaintiff has completely missed the crux of this case by proceeding on the theory that Cedar City actually owned the title to the street property and that this automatically reverted to and vested in the abutting owner upon the vacation of the street. That it has never been the law that upon the closing of a street, the land reverts to the abutting owner simply because he is the abutting owner. That the law is that upon closing a street, the land goes to the owner of the fee in the street and the appellant has made no effort to prove that she is the owner of the fee but rather it is clear that the appellant is the owner and is now entitled to full ownership of the property. Even though not relied upon by the appellant, the doctrine that the grantor intends the grantee of abutting property take to the center of the street has no application here because there never was a street and even if there were, the intent of the parties as gathered from all the various

deeds, effectively refutes the common law rule. In any event, neither under the common law rule nor under the plaintiff's theory can the plaintiff prevail because under both theories there must be a street. Since there never was a street, we are actually not concerned with who owns a street after the public body vacates it or for that matter with the rights of abutting owners. Instead we are only concerned with the ownership of adjoining building lots, to be determined by the various conveyances from the common grantor, and from them it is clear that the defendant-appellant is the owner of the disputed property.

*Respectfully submitted,*

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*Attorney for Appellant.*